

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE**

In the Matter of Residential Building  
Contractor License of R-9 Carpentry &  
Concrete, LLC, License No. 20394029

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for a hearing before Administrative Law Judge George A. Beck at 1:30 p.m. on November 8, 2004, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401-2138.

Michael J. Tostengard, Assistant Attorney General, Suite 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Commerce ("Department"). The Respondent did not appear at the hearing. The record closed on November 8, 2004, upon Respondent's default.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### **STATEMENT OF THE ISSUE**

The issue in this case is whether or not the Respondent should be subject to summary suspension of its residential building contractor license.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On October 18, 2004, a Notice of and Order for Hearing, Statement of Charges, and Order for Summary Suspension in this matter were served on Respondent via U.S. Mail at R-9 Carpentry and Concrete, LLC, 8986 92<sup>nd</sup> Street South, Cottage Grove, MN 55106. Qualifying Person: Michael Bruce Randolph.

2. The Notice of and Order for Hearing served on Respondent contained the following statements:

**The Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department of Commerce's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.**

**If any party has good cause for requesting a delay of the prehearing conference, the request must be made in writing to the Administrative Law Judge at least five days prior to the prehearing conference. A copy of the request must be served on the other party.**

**Any party intending to appear at the prehearing conference must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on the Department of Commerce's attorney. A Notice of Appearance form is enclosed.**

3. On November 2, 2004 an Amended Statement of Charges was served upon the Respondent by U.S. mail at the same address set out above.

4. After the service of the Notice of and Order for Hearing, the Respondent's qualifying person contacted the Department of Commerce and acknowledged the November 8, 2004 hearing date.

5. Respondent did not appear at the November 8, 2004 hearing, made no prehearing request for a continuance, and did not file a Notice of Appearance.

6. The allegations of the Notice of and Order for Hearing and Amended Statement of Charges are deemed proved and incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce have subject matter jurisdiction herein pursuant to Minn. Stat. §§ 45.027, 326.91 and 14.50.

2. Respondent was given proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant and substantial and procedural requirements of statute and rule.

4. Under Minn. Rule 1400.6000, Respondent is in default as a result of his failure to appear at the scheduled hearing.

5. Under Minn. Rule 1400.6000, the allegations and the issues set out in the Notice of and Order for Hearing and Statement of Charges may be taken as true or deemed proved when a party defaults.

6. Based upon the facts set out in the Notice of and Order for Hearing and Statement of Charges, Respondent has violated Minn. Stat. § 45.027, subd. 1a, and Minn. Stat. § 326.91, subd. 1(2)(6) and Minn. Rule pt. 2891.0050, subp. 1A.

7. An order is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the summary suspension of Respondent's license be AFFIRMED and CONTINUED.

Dated this 12<sup>th</sup> day of November 2004.

S/ George A. Beck  
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GEORGE A. BECK  
Administrative Law Judge

Reported: Default.